

REMARKS

This amendment responds to the final office action dated August 13, 2008.

The Examiner indicated that claims 6, 16, and 22 would be allowable if rewritten in independent form.

The Examiner rejected each of claims 1-5, 7-15, 17, and 23 under 35 U.S.C. § 102(e) as being anticipated by Jarman et al., U.S. Patent Application Pub. No. 2004/0184670 (Jarman '670). The Examiner rejected claims 12 and 14 under 35 U.S.C. § 102(e) as being anticipated by Jarman et al, U.S. Patent Application Pub. No. 2004/0240747 (Jarman '747). The Examiner rejected the remaining claims 18-21 under 35 U.S.C. § 103(a) as being obvious over respective combinations, each involving one of Jarman '670 or Jarman '747.

Attached is a Declaration of A. Mufit Ferman that removes each of Jarman '670 and Jarman '747 as prior art against the claims of the present application. Jarman '670 has an effective date of February 19, 2003. Jarman '747 has an effective date of January 3, 2003. The attached Declaration of A. Mufit Ferman establishes that a reduction to practice of the inventions claimed in the present application was made on a date prior to January 3, 2003, thus antedating both cited Jarman references.

The submitted declaration redacts the actual dates of conception and reduction to practice. The Examiner appears to believe that the redaction of these dates renders the declaration ineffective to overcome the cited references. *See* Office Action dated August 13, 2008 at pp. 2-3 ("Also, dates on Pages 1-3 of the evidence are erased. Therefore the affidavit to overcome Jarman's reference is ineffective . . .") Patent Office procedure, however, permits the applicant to redact actual dates in documentation supporting an antedating affidavit, and instead aver in the body of the declaration that the redacted dates were prior to the effective date of the prior art being antedated. *See* MPEP at § 715.07 ("If the dates of the exhibits have been removed or blocked off, the matter of dates can be taken care of in the body of the oath or declaration . . . [and] if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date."). This is the procedure that the applicant is using, hence the Examiner's suggestion that the attachments to the declaration must show actual dates is incorrect.


Furthermore, the Examiner appears to take the position that the applicant's averment in the body of the declaration that the date at which a reduction to practice (the occurrence of which is supported by corroborating documentation) was made may be disregarded by the Examiner if the corroborating documents were not themselves dated prior to the effective date of the cited references. This, also, is incorrect. See MPEP at § 715.07 Though an applicant is required to submit corroborating documentation as to what invention was reduced to practice, an averment made *in a supporting Exhibit* of the date at which reduction to practice occurred *requires no corroboration*. See *Id.* ("The facts to be established under 37 CFR 1.131 are similar to those to be proved in an interference. The difference lies in the way in which the evidence is presented. . . . [I]n interference practice, conception, reasonable diligence, and reduction to practice require corroboration, whereas averments made in a 37 CFR 1.131 affidavit do not require corroboration; an applicant may stand on his or her own affidavit or declaration if he or she so elects.")

In the present instance, the inventor reduced to practice the inventions claimed in the present application, as evidenced by the Exhibit attached to the declaration of A. Mufit Ferman. After reducing the invention to practice, the inventor prepared and submitted an invention disclosure form to his employer documenting both the invention and the procedures used during the reduction to practice. In the invention disclosure form, the inventor informed his employer of the respective dates of conception and reduction to practice. Thus, the date of reduction to practice evidenced by the invention disclosure form is that averred by the inventor in that form, and not the date upon which the form was generated, as argued by the Examiner.

For the foregoing reasons, the applicant respectfully requests that the respective rejections of claims 1-5, 7-15, 17-21, and 23 be withdrawn.

In view of the foregoing amendments and remarks, the applicant respectfully requests reconsideration and allowance of claims 1-23.

Respectfully submitted,


Kurt Rohlf
Reg. No. 54,405
Tel No.: (503) 227-5631

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Amdt. dated October 27, 2008
Reply to Office Action of August 13, 2008

APPENDIX

Attached is a Declaration of Kurt Rohlf's and a Declaration of A. Mufit Ferman.